

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 385

Introduced by Senator Ducheny

February 17, 2005

An act to amend and repeal Section 60640 of the Education Code, relating to pupil assessment.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Ducheny. Pupil assessment.

Existing law, the Standardized Testing and Reporting (STAR) Program, requires each school district, charter school, and county office of education to administer to each of its pupils in grades 3 and 7 a designated achievement test and, until July 1, 2007, to each of its pupils in grades 2 to 11, inclusive, and after July 1, 2007, to each of its pupils in grades 3 to 11, inclusive, a standards-based achievement test.

Existing law requires, until July 1, 2007, a pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, to take a test in his or her primary language if a test is available and fewer than 12 months have elapsed after the pupil's initial enrollment in a California public or nonpublic school.

This bill would instead require a pupil of limited English proficiency who is enrolled in those grades and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months to take a test in his or her primary language if the test is available.

Existing law, operative July 1, 2007, requires a pupil identified as limited English proficient who is enrolled in any of grades 3 to 11, inclusive, and has not been reclassified as proficient in English, to

take a test in his or her primary language if a test is available and if fewer than 12 months have elapsed after his or her initial enrollment in any public school in the state.

This bill would instead provide that, effective January 1, 2007, a pupil with limited English proficiency who is enrolled in any of grades 3 to 11, inclusive, is required to take a test in his or her primary language if a test is available, and would require these tests to be administered only to limited-English-proficient pupils who either receive instruction in their primary language or have been enrolled in a school in the United States for less than 12 months.

This bill would make other technical, nonsubstantive changes.

To the extent that this bill would impose additional duties on school districts, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(1) The existing Standardized Testing and Reporting (STAR) Program, until July 1, 2007, requires each school district, charter school, and county office of education to administer a designated achievement test to each of its pupils in grades 3 and 7 and a standards-based achievement test to each of its pupils in grades 2 to 11, inclusive.~~

~~Existing law, commencing July 1, 2007, excludes pupils in grade 2 from the standards-based achievement test requirement.~~

~~This bill would make those provisions inoperative on July 1, 2011, and repeal them on January 1, 2012.~~

~~(2)~~

~~Existing law requires a pupil of limited English proficiency, as specified, to take a test in his or her primary language if a test is available, and if fewer than 12 months have elapsed after his or her initial enrollment in a school in the state.~~

~~This bill, instead, until July 1, 2011, would require a pupil of limited English proficiency, as specified, to take a test in his or her primary language if a test is available and he or she either receives instruction~~

~~in his or her primary language or has been enrolled in a school in the United States for less than 12 months.~~

~~(4) Existing law requires the Superintendent of Public Instruction to apportion funds to school districts to enable districts to meet these testing requirements.~~

~~This bill would delete these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 60640 of the Education Code, as~~
2 ~~amended by Section 15 of Chapter 233 of the Statutes of 2004, is~~
3 ~~amended to read:~~

4 ~~SECTION 1. Section 60640 of the Education Code, as~~
5 ~~amended by Section 15 of Chapter 233 of the Statutes of 2004, is~~
6 ~~amended to read:~~

7 60640. (a) There is hereby established the Standardized
8 Testing and Reporting Program, to be known as the STAR
9 Program.

10 (b) Commencing in the 2004–05 fiscal year and each fiscal
11 year thereafter, and from the funds available for that purpose,
12 each school district, charter school, and county office of
13 education shall administer to each of its pupils in grades 3 and 7
14 the achievement test designated by the ~~State Board of Education~~
15 ~~state board~~ pursuant to Section 60642 and shall administer to
16 each of its pupils in grades 2 to 11, inclusive, the
17 standards=based achievement test provided for in Section
18 60642.5. The state board shall establish a testing period to
19 provide that all schools administer these tests to pupils at
20 approximately the same time during the instructional year, except
21 as necessary to ensure test security and to meet the final filing
22 date.

23 (c) The publisher and the school district shall provide two
24 makeup days for the testing of previously absent pupils within
25 the testing period established by the state board in subdivision
26 (b).

27 (d) The governing board of the school district may administer
28 achievement tests in grades other than those required by
29 subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) (A) *A pupil identified as limited English proficient, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months, shall take the achievement test in his or her primary language if a test is available.*

(B) At the option of the school district, ~~pupils~~ *a pupil* with limited English proficiency who ~~are~~ *is* enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision ~~and subdivision (g)~~ shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. *Results of these primary language tests may also be disaggregated by type of program, duration in a program, and English proficiency.*

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language assessments that are aligned to the state academic content standards. Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils. The dominant primary language shall be determined by the count in the annual language census of the primary language of each

1 limited-English-proficient pupil enrolled in the California public
2 schools.

3 (B) Once a dominant primary language assessment is available
4 for use for a specific grade level, it shall be administered in place
5 of the assessment designated pursuant to paragraph (1) for that
6 grade level.

7 (C) In choosing a contractor to develop a primary language
8 assessment the ~~State Board of Education~~ *state board* shall
9 consider the criteria for choosing a contractor or test publisher as
10 specified by Sections 60642 and 60643, and as specified by
11 Section 60642.5, as applicable.

12 (D) Subject to the availability of funds, the assessments shall
13 be developed in grade order starting with the lowest grade
14 subject to the STAR Program.

15 (E) If the state board contracts for the development of primary
16 language assessments or test items to augment an existing
17 assessment, the state shall retain ownership rights to the
18 assessment and the test items. With the approval of the state
19 board, the department may license the test for use in other states
20 subject to a compensation agreement approved by the
21 Department of Finance.

22 (F) On or before January 1, 2006, the department shall submit
23 to the Legislature a report on the development and
24 implementation of the initial primary language assessments and
25 recommendations on the development and implementation of
26 future assessments and funding requirements.

27 ~~(g) A pupil of limited English proficiency who is enrolled in~~
28 ~~any of grades 2 to 11, inclusive, shall be required to take a test in~~
29 ~~his or her primary language if a test is available, and if fewer~~
30 ~~than 12 months have elapsed after his or her initial enrollment in~~
31 ~~any public or nonpublic school in the state.~~

32 ~~(h)~~

33 ~~(1) The Superintendent of Public Instruction shall apportion~~
34 ~~funds to school districts to enable school districts to meet the~~
35 ~~requirements of subdivisions (b), (f), and (g) (f).~~

36 (2) The state board shall annually establish the amount of
37 funding to be apportioned to school districts for each test
38 administered and shall annually establish the amount that each
39 publisher shall be paid for each test administered under the
40 agreements required pursuant to Section 60643. The amounts to

1 be paid to the publishers shall be determined by considering the
2 cost estimates submitted by each publisher each September and
3 the amount included in the annual Budget Act, and by making
4 allowance for the estimated costs to school districts for
5 compliance with the requirements of subdivisions (b), ~~(f)~~, and ~~(g)~~
6 ~~(f)~~.

7 (3) An adjustment to the amount of funding to be apportioned
8 per test may not be valid without the approval of the Director of
9 Finance. A request for approval of an adjustment to the amount
10 of funding to be apportioned per test shall be submitted in writing
11 to the Director of Finance and the chairpersons of the fiscal
12 committees of both houses of the Legislature with accompanying
13 material justifying the proposed adjustment. The Director of
14 Finance is authorized to approve only those adjustments related
15 to activities required by statute. The Director of Finance shall
16 approve or disapprove the amount within 30 days of receipt of
17 the request and shall notify the chairpersons of the fiscal
18 committees of both houses of the Legislature of the decision.

19 ~~(i)~~

20 ~~(h)~~ For the purposes of making the computations required by
21 Section 8 of Article XVI of the California Constitution, the
22 appropriation for the apportionments made pursuant to paragraph
23 (1) of subdivision ~~(h)~~ ~~(g)~~, and the payments made to the
24 publishers under the contracts required pursuant to Section 60643
25 or subparagraph (C) of paragraph (1) of subdivision (a) of
26 Section 60605 between the department and the contractor, are
27 “General Fund revenues appropriated for school districts,” as
28 defined in subdivision (c) of Section 41202, for the applicable
29 fiscal year, and included within the “total allocations to school
30 districts and community college districts from General Fund
31 proceeds of taxes appropriated pursuant to Article XIII B,” as
32 defined in subdivision (e) of Section 41202, for that fiscal year.

33 ~~(j)~~

34 ~~(i)~~ As a condition to receiving an apportionment pursuant to
35 subdivision ~~(h)~~ ~~(g)~~, a school district shall report to the
36 ~~superintendent~~ *Superintendent* all of the following:

37 (1) The number of pupils enrolled in the school district in
38 grades 2 to 11, inclusive.

39 (2) The number of pupils to whom an achievement test was
40 administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

~~(k)~~

(j) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 60640 of the Education Code, as added by Section 16 of Chapter 233 of the Statutes of 2004, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2007–08 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the ~~State Board of Education~~ *state board* pursuant to Section 60642 and shall administer to each of its pupils in grades 3 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate

1 in the testing, even with accommodations, shall be given an
2 alternate assessment.

3 (f) (1) *A pupil identified as limited English proficient, and*
4 *who either receives instruction in his or her primary language or*
5 *has been enrolled in a school in the United States for less than 12*
6 *months, shall take the achievement test in his or her primary*
7 *language if a test is available.*

8 (2) At the option of the school district, a pupil with limited
9 English proficiency who is enrolled in any of grades 3 to 11,
10 inclusive, may take a second achievement test in his or her
11 primary language. Primary language tests administered pursuant
12 to this subdivision ~~and subdivision (g) shall~~ *are* be subject to the
13 requirements of subdivision (a) of Section 60641. These primary
14 language tests shall produce individual pupil scores that are valid
15 and reliable. *Results of these primary language tests may also be*
16 *disaggregated by type of program, duration in a program, and*
17 *English-proficiency.* Notwithstanding any other law, the state
18 board shall designate for use, as part of this program, a single
19 primary language test in each language for which a test is
20 available for grades 3 to 11, inclusive, pursuant to the process
21 used for designation of the assessment chosen in the 1997–98
22 fiscal year, as specified by Sections 60642 and 60643, and as
23 specified by Section 60642.5, as applicable.

24 ~~(g) A pupil identified as limited English proficient pursuant to~~
25 ~~the administration of a test provided by Section 60810, who is~~
26 ~~enrolled in any of grades 3 to 11, inclusive, and has not been~~
27 ~~reclassified as proficient in English pursuant to reclassification~~
28 ~~procedures required to be developed by Section 313, shall be~~
29 ~~required to take a test in his or her primary language if a test is~~
30 ~~available and if fewer than 12 months have elapsed after his or~~
31 ~~her initial enrollment in any public school in the state.~~

32 ~~(h) (1) The Superintendent of Public Instruction shall~~
33 ~~apportion funds to school districts to enable school districts to~~
34 ~~meet the requirements of subdivision (b), the alternative~~
35 ~~assessment required by subdivision (e), and subdivisions (f) and~~
36 ~~(g) subdivision (f).~~

37 (2) The state board shall annually establish the amount of
38 funding to be apportioned to school districts for each test
39 administered and shall annually establish the amount that each
40 publisher shall be paid for each test administered under the

agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivisions ~~(f) and (g)~~ subdivision (f).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

~~(i)~~

(h) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision ~~(h)~~ (g), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are “General Fund revenues appropriated for school districts,” as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202, for that fiscal year.

~~(j)~~

(i) As a condition to receiving an apportionment pursuant to subdivision ~~(h)~~ (g), a school district shall report to the ~~superintendent~~ Superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades ~~2~~ 3 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

~~(k)~~

(j) The ~~superintendent~~ *Superintendent* and the state board are authorized and encouraged to assist postsecondary educational institutions to use the California Standards Tests for academic credit, or placement, and admissions processes, or both purposes.

~~(h)~~

(k) The ~~superintendent~~ *Superintendent* shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.

~~(m)~~

(l) This section shall become operative July 1, 2007.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
March 29, 2005 (JR11)**

CORRECTIONS:

Text — Pages 3, 5, 7, and 10.

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